

RESOLUTION NO. 3799

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A DONATION AGREEMENT WITH WELLS FARGO BANK.

WHEREAS, Wells Fargo Bank owns and desires to donate certain real property, commonly known as 502 Marion, Miles City, Montana, to the City of Miles City;

AND WHEREAS, the City of Miles City agrees to accept said donation, subject to the terms and conditions of a certain Donation Agreement presented to the City by Wells Fargo Bank;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Donation Agreement, attached hereto as Exhibit "A," between the City of Miles City and Wells Fargo Bank is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 26th DAY OF MAY, 2015.



C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk

DONATION AGREEMENT

This Donation Agreement (the "Agreement") for certain real property located at **502 MARION STREET, MILES CITY, MT 59301** ("Property"), is effective upon the Effective Date (defined below), between Owner, whose address is 8480 Stagecoach Cir, Frederick, MD 21701 ("Donor") and **CITY OF MILES CITY**, whose address is **17 South 8th Street, Miles City, MT 59301** ("Donee"). It is agreed that upon the terms and conditions set forth in this Agreement the Donor shall donate and convey all of its rights and interests in, and the Donee shall accept and be the successor to all such rights and interests in, the real property identified and described herein. Donor and Donee may each be referred to as a "Party" and collectively as the "Parties".

RECITALS

In consideration of the mutual covenants of the Parties contained in this Agreement, Donor does grant to Donee title to the Property and Donee accepts from the Donor title to the Property under the following terms and conditions:

- A. Donor acquired the Property identified on Exhibit A through the foreclosure process or by a deed in lieu of foreclosure;
- B. Donor did not originally construct any of the improvements forming part of the Property;
- C. Donor has not occupied the Property for its own use;
- D. Due to Donor's lack of familiarity with the Property, Donor is unwilling to make any representations or warranties whatsoever regarding the Property and Donor is only willing to grant Donee the Property on an "as is, where is" and "with all faults" basis; and
- E. Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Property from Donor. Accordingly, Donee is willing to accept the Property from Donor without any representations or warranties whatsoever regarding the Property and on an "as is, where is" and "with all faults" basis.

AGREEMENT

1. DONATION.

- 1.1 **Effective Date.** The date this Agreement is signed by both Parties shall be (the "Effective Date") of the Agreement.
- 1.2 **Purchase Price.** The purchase price for the Property shall be ONE and 00/100 Dollars (\$1.00) (the "Purchase Price"). However, the amount payable by the Donee to Donor for the purposes of this transaction as the consideration to be paid shall be ZERO and 00/100 Dollars (\$0.00) (the "Total Adjusted Sales Price"). The term Total Adjusted Sales Price has been determined by the Donor and

Donee taking certain agreed upon sums and applying such sums to the following formula: (a) the Purchase Price less (b) Donor adjustments of -\$1.00.

- 1.3 **Closing.** Donee may choose the Donor's Preferred Title Company (defined below) or any other third party.
- (a) Upon Donee's acceptance of the Donor's offer, Donor shall provide to Donee a suggested company ("Donor's Preferred Title Company") to act as the closing agent and title company.
 - (b) If Donee selects Donor's Preferred Title Company to act as the closing agent and the title company, then Donor shall pay all costs associated with the conveyance of title to the Property, including attorneys' fees and costs, agents' fees, documentary stamp taxes and recording costs ("Closing Costs").
 - (c) If Donee selects a third party other than Donor's Preferred Title Company to act as the closing agent or the title company, then Donor shall pay Closing Costs in the amount of the lesser of (a) \$2,500.00 or (b) the actual amount of Closing Costs.
 - (d) The Donee will notify the Donor of the title company and closing agent Donee has selected by completing the selection form attached hereto as Exhibit "B".
- 1.4 **Transfer.** Donor agrees to donate the Property to Donee and Donee agrees to accept the Property from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Property to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release set forth in Section 2.2 of this Agreement.
- 1.5 **Deed.** Title shall be transferred on the Closing Date via a Deed (which Deed may be known as a Special Warranty, Limited Warranty, Quit Claim or Bargain and Sale Deed). Any reference to the term "Deed" herein shall be construed to refer to such form of Deed. Donor shall be responsible for recording the Deed following the Closing Date. The Deed to be delivered on the Closing Date shall be a Deed in which the Grantor therein grants and conveys to the Grantee therein only that title to, or interest and rights in, the Property granted therein that the Grantor may have at the time of the grant, and shall contain no warranty, guaranty or indemnification of any kind, express or implied.
- 1.6 **Title and Examination.** Within five (5) days from the Effective Date, Donor will order a title commitment for a: (a) title insurance policy (the "Title Commitment"), or (b) a title report or opinion of title (the "Title Opinion") and provide a copy to Donee upon request or on the Closing Date. Donor will provide marketable title to the Property, which shall be acceptable to Donee in its absolute discretion and as a condition and contingency to Donee's obligation to accept the Property under this Agreement.

- 1.7 **Taxes and Utilities.** The Parties agree that the Donor will only be responsible for the following expenses due as of the Closing Date: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. The Property taxes will be prorated based on an estimate of actual taxes from the previous year on the Property. All proration will be based upon a 30-day month and all such proration shall be final. Donor will not be responsible for any amounts due, paid or to be paid after closing, including but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised value of the Property.
- 1.8 **Risk of Loss.** In the event of fire, destruction, or other casualty loss to the Property after the Effective Date, and prior to the Closing Date, (a) Donor may, at its sole discretion, repair or restore the Property, or (b) either Party may terminate the Agreement. If Donor elects to repair or restore the Property, then Donor may, in its sole discretion, limit the amount to be expended. If Donor elects not to repair or restore the Property, Donee shall either (a) acquire the Property in its AS-IS condition at the time of such acquisition, or (b) terminate the Agreement.
- 1.9 **Eminent Domain.** In the event that the Donor's interest in the Property, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate the Agreement and neither Party shall have any further rights or liabilities hereunder.

2. **ACKNOWLEDGMENTS AND RELEASE.**

- 2.1 **DONEE'S ACKNOWLEDGMENTS.** DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THE PROPERTY IS IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE. DONEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENT OF DONOR HEREIN, AND EXCEPT AS OTHERWISE SPECIFIED HEREIN, DONOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, OR (WITHOUT LIMITATION) TO ANY OF THE FOLLOWING MATTERS:
- (a) **Soils, Etc.** Soils, seismic, hydrological, geological and topographical conditions and configurations.
- (b) **Artifacts.** Archeological, prehistoric and historic artifacts, remains and relics.

- (c) Endangered Species. Endangered plant, animal and insect species.
- (d) Hazardous Materials. Hazardous Materials and other environmental conditions, including without limitation, lead-based paint, asbestos and mold.
- (e) Physical Defects. Physical and mechanical defects in or on the Property, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- (f) Land and Floor Area. The area of the land and the square footage contained in any buildings or improvements.
- (g) Utilities, Schools, Etc. Availability of adequate utilities, water, schools, public access, and fire and police protection.
- (h) Assessment Districts. The status and nature of any assessment districts and the amount of any assessment liability.
- (i) Planning and Zoning. Present, past or future conformity of the Property with planning, building, zoning, subdivision and development statutes, ordinances, regulations and permits, the general plan and the specific plan.
- (j) Development Fees. The character and amount of any fee, charge or other consideration which must be paid by Donee to develop the Property.
- (k) Title. The condition of title to the Property, including but not limited to the existence of any easement, license or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Property.
- (l) Taxes. The status of any general or special real property taxes or assessments or personal property taxes or any other taxes and assessments applicable to the Property.
- (m) Owner's Association. The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- (n) Other Matters. Any other matter relating to the Property or to the development or operation of the Property, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability, investment return and compliance of the Property, its operation or use with any laws, rules, ordinances, regulations or codes of any government or other body.

2.2 RELEASE.

- (a) RELEASE. DONEE FULLY RELEASES AND DISCHARGES DONOR FROM AND RELINQUISHES ALL RIGHTS, CLAIMS AND ACTIONS THAT DONEE MAY HAVE OR ACQUIRE AGAINST DONOR WHICH ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION (A) ANY MATTER SET FORTH IN SECTION 2.1 ABOVE, (B) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT ANY PROPERTY (INCLUDING BUT NOT LIMITED TO ANY UNDISCOVERED HAZARDOUS MATERIALS LOCATED BENEATH THE SURFACE OF THE PROPERTY) AND (C) VIOLATIONS OF ANY HAZARDOUS MATERIALS LAWS PERTAINING TO THE PROPERTY OR THE ACTIVITIES THEREON. THIS RELEASE APPLIES TO ALL DESCRIBED RIGHTS, CLAIMS AND ACTIONS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, PRESENT OR FUTURE.
- (b) MEANING. FOR PURPOSES OF THIS SECTION 2.2, ALL REFERENCES TO "DONOR" SHALL INCLUDE: (A) DONOR'S PARENT, SUBSIDIARY AND AFFILIATE CORPORATIONS, (B) DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, AND (C) THE HEIRS, SUCCESSORS, PERSONAL REPRESENTATIVES AND ASSIGNS OF DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS.
- (c) EFFECTIVENESS. THE PROVISIONS OF THIS SECTION 2 SHALL BE EFFECTIVE AS OF THE CLOSING DATE AND SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS AGREEMENT.

3. TIME IS OF THE ESSENCE: CLOSING DATE.

- 3.1 It is agreed that time is of the essence with respect to all dates specified in this Agreement and any addenda, riders or amendments thereto, meaning that all deadlines are intended to be strict and absolute. The Agreement shall terminate automatically, and without notice, if it is not concluded by the Closing Date, or any agreed extension thereof.
- 3.2 The closing shall take place on or before **JUNE 19, 2015** (the "Closing Date"), unless the Closing Date is extended in writing signed by Donor and Donee or extended by Donor under the terms of this Agreement. The closing shall be held in the offices of the title company of Donee's choice, Donor's attorney or Donee's attorney, or at a place so designated and approved by Donor, unless otherwise

required by applicable law. If the closing does not occur by the date specified in this Section or in any extension, this Agreement is automatically terminated.

4. **GENERAL PROVISIONS.**

- 4.1 **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning the Donation and sale of the property, and supersedes all prior written or oral agreements between the parties to this Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.
- 4.2 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.
- 4.3 **Partial Invalidity.** If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Agreement.
- 4.4 **Termination.** Prior to the Closing Date, this Agreement may be terminated by Donor at any time for any or no reason by written notice to Donee.
- 4.5 **Governing Law.** The parties intend and agree that this Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.
- 4.6 **No Third Parties Benefits.** No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Agreement.
- 4.7 **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either Party of the same or any other provision.
- 4.8 **Captions.** The captions and Section numbers of this Agreement are for convenience and in no way define or limit the scope or intent of such Sections of this Agreement.
- 4.9 **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing

the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

- 4.10 **No Presumption.** All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Agreement would be construed or interpreted against the party causing the document to be drafted.
- 4.11 **Notices.** Any notices or other communication required or permitted under this Agreement shall be in writing, and shall be personally delivered, or sent by certified or registered United States mail, postage prepaid, return receipt requested, or by overnight delivery by a reputable courier to the address of the party set forth in this Section, or sent by fax to the Fax number of the party set forth in this Section, or sent by e-mail to the party set for in this Section. Such notice or communication shall be deemed given if sent by personal delivery or by overnight courier, when delivered in person, if sent by fax, when evidence of successful transmission by telecopier has been received by sender or, in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee: **CITY OF MILES CITY**

Address:
17 South 8th Street
Miles City, MT 59301

If to the Donor: Owner

1 Home Campus
Des Moines, Iowa 50328-0001
Attention: **Amy Schnell**, MAC# X2301-049
Fax Number: **1.877.611.1969**
Amy.Schnell@wellsfargo.com

- 4.12 **Joint and Several.** If more than one person or entity has executed this Agreement as Donee, the obligations of all such persons or entities hereunder shall be joint and several.

[Signatures on the next page]

DONEE:

CITY OF MILES CITY

Signature: Chris A. Grenz

Print Name: Chris A. Grenz

Title: Mayor

Date: 5/26/15

DONOR:

OWNER

Signature: Sara Goodman

Print Name: Sara Goodman

Title: ASSET MANAGER

Date: 6/4/15

EXHIBIT "A"

PROPERTY ADDRESS:

502 MARION STREET
MILES CITY, MT 59301

LEGAL DESCRIPTION:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CUSTER, STATE OF
MONTANA, AND
IS DESCRIBED AS FOLLOWS:
Lot 1 in Block 10 of Gordon's Addition to the City of Miles City, Custer County, Montana, according to the official
plat and
survey of said addition now on file and of record in the office of the County Clerk and Recorder in and for Custer
County,
Montana.

TAX PARCEL NO:

000RMS1821

EXHIBIT "B"
Donee's Closing Agent

Please select ONE of the following options for closing:

DONEE: CITY OF MILES CITY

Donee selects Donor's Preferred Title Company to act as the closing agent and the Title Company.

If the Donee chooses not to use the Donor's Preferred Title Company to act as the closing agent and the Title Company, then the following section will need to be completed. Please note this box **MUST** be selected to qualify for the up to \$2,500 Donee closing credit.

Please provide contact information for Donee's chosen Title Company:

Company:

Company Mailing Address:

Contact Name:

Phone:

Email:

PREMIERE AssetSM Services



DONATION FILE

Your company contact will receive the closing instructions via email. Below is a summary of information pertaining to this transaction:

502 MARION STREET
MILES CITY, MT 59301

PAS #: 0016404287B

DONEE:

CITY OF MILES CITY, Butch Grenz, mayor@milescity-mt.org, 406-234-2890

FEES:

Agent Commission: \$1,500.00

iAgent Reimbursement: \$115.00

Agent Bonus: \$2,000.00

CLOSE DATE:6/19/2015

DONEE CLOSING AGENT/ATTY:

The Seller will pay all closing costs for the buyer upon using the seller selected title company.

The Seller will be providing title insurance.

PAS CLOSING AGENT/ATTY:

STEWART TITLE (DATAQUICK TITLE), (877) 813-7316, ctscontracts@stewart.com

RECIPIENTS:

PAS Listing Agent :

Hardesty Real Estate, Carol Hardesty, 406-234-2600, hardesty@midrivers.com

PAS CLOSER:

Ashley.Pannkuk@wellsfargo.com

ASSET MANAGER:

Sara.M.Goodman@wellsfargo.com

PAS PRE-CLOSER:

Amy.Schnell@wellsfargo.com

* Limited Warranty Deed